

Event/Meeting Name: **Native Village of Tyonek**

Audience/ External  
Participants:

Two village members and two of their counsel from Native American Rights Fund

Purpose of the  
Event/Meeting?

To discuss the environmental implications of the proposed Chuitna Mine at Cook Inlet, Alaska

Objective/Takeaway of  
the Event/Meeting?

Information about the tribe's perspective on the proposed Chuitna mine. EPA will serve in a listening capacity only. Administrator will point to the draft MOU and the Tribe will most likely request the Administrator to partake in an official MOU signing ceremony later on.

Has the Administrator  
done this event/meeting  
before? When?

No, but many high-level R10 officials met with Tyonek Village this past February, and continue a robust dialogue.

Key Talking Point(s)  
the Administrator  
should deliver:

- I greatly appreciate the work that you've done for your tribe and for your thoughts and concern over environmental issues in your Village. I also appreciate your concern over preserving your cultural resources, including salmon.
- I understand that you have a well-developed and open dialogue with Dennis and his Region 10 staff. I'd like to encourage you to continue to reach out to other neighboring tribes and communities. I'd also recommend that you continue your work with our Region 10 EPA Office.
- The timing and schedule of our oversight actions is governed by our partner agencies' processes and schedules, and is largely out of our control. As the State of Alaska and Army Corps of Engineers develop respective schedules for their regulatory actions, we will better understand the timing of our oversight responsibilities and actions.
- That said, I'd encourage you to look to the proposed MOU with my Agency to coordinate further and to continue to strengthen EPA's partnership with you, in addition to meeting bi-weekly. I also understand that you're meeting with our Office of Water Friday, and I encourage you to continue an open dialogue with them as well, specifically on your questions regarding permitting.
- I realize that you have concerns relating this project with the Pebble Mine project, and I'd like to remind you that the two are different projects.

Relevant Points of  
Interest Worth Noting:

- Region 10 has been working closely with the Tyonek Village for some time to clarify Agency roles and responsibilities after the
- The Village is strongly opposed to the Chuitna Mine due to its possible impacts on waterways and salmon. At the same time, the Tyonek Native Corporation, separate from the Village but overlapping in its membership, is strongly for the Mine project and the economic benefits proposed.
- The Village is a fishing and subsistence-based tribe.
- At the request of the Village, R10 is proposing an EPA-R10 MOU as the Village navigates the NEPA process.
- The group is meeting with Office of Water (Nancy Stoner) on Friday to discuss more specifics about the 404 process.
- Summary of Chuitna Mine Status:
  - Project originally permitted and reviewed in late 1980's, but never moved forward. EPA was lead on original Environmental Impact Statement.
  - Project permitting and environmental review restarted in 2006. EPA determined a Supplemental Environmental Impact Statement would be required. EPA assumed lead agency with Corps of Engineers, Alaska DNR, US Fish and Wildlife, and NVT serving as cooperating agencies.
  - When State assumed NPDES delegation for mining sector in 2010 EPA transferred role of lead agency for SEIS to Corps of Engineers. EPA assumed cooperating agency role, with USFWS, NVT, and Alaska DNR also continuing as cooperating agencies.
  - SEIS development in progress. Cooperating agencies reviewing/commenting on preliminary draft Sections of SEIS. Draft SEIS for public review anticipated in 2013.
- EPA's role is as a **partner** throughout the SEIS process.

Attachments:

Original Meeting Request

Fact Sheet: Chuitna Mine

Letter to Standifer

Fact Sheet Roles and Responsibilities

Proposed MOU with Tyonek Village

Fact Sheets: 404C and 404Q



## CHUITNA COAL PROJECT

Sept 2012

### ***Project Description***

Large scale surface coal mine proposed in south central Alaska, near the Native Village of Tyonek (NVT) and community of Beluga, approximately 45-miles west of Anchorage on west side of Cook Inlet. Project proponents (PacRim Coal) hold ~20,000 acre lease track within the Beluga Coal Fields, estimated at 1 billion metric tons of coal. Project involves mining one ~5,000 acre unit (Logical Mining Unit 1), with mineable coal reserves of ~250 million metric tons (MMT). Life of mine expected to be 25 years at annual production rate of 12 MMT, making it the largest coal mine in Alaska (current largest is Usibelli=1.5 MMT annually).

Three major project components include: 1) upland coal mine; 2) project infrastructure connecting mine to Cook Inlet, and; 3) Ladd Landing coal export terminal on coast of Cook Inlet. Area is currently undeveloped with minimal infrastructure. Coal would be mined, transferred 12 miles to export terminal via elevated conveyor, and loaded onto barges/tankers for shipment to Pacific markets including Asia and South America.

### ***Background and Status***

- Project originally permitted and reviewed in late 1980's, but never moved forward. EPA was lead on original Environmental Impact Statement.
- Project permitting and environmental review restarted in 2006. EPA determined a Supplemental Environmental Impact Statement would be required. EPA assumed lead agency with Corps of Engineers, Alaska DNR, US Fish and Wildlife, and NVT serving as cooperating agencies.
- When State assumed NPDES delegation for mining sector in 2010 EPA transferred role of lead agency for SEIS to Corps of Engineers (no EPA-issued NPDES permit=no EPA NEPA action=no EPA lead agency status). EPA assumed cooperating agency role, with USFWS, NVT, and Alaska DNR also continuing as cooperating agencies.
- SEIS development in progress. Cooperating agencies reviewing/commenting on preliminary draft Sections of SEIS. Draft SEIS for public review anticipated in 2013.

### ***Affected Environment***

The project is located in the largely undeveloped and pristine Chuitna and Three Mile Creek watersheds. The Chuit River watershed supports all 5 species of salmon, and is habitat to numerous other species of terrestrial, aquatic, and avian wildlife, many of which have significant subsistence and cultural uses to the local Tribe(s). Three tributaries to the Chuit River run directly through or adjacent to the proposed mine area. Stream 2004 borders the west mine boundary, Stream 2002 borders the east, and Stream 2003 runs directly through the mine area. The 5,000 acre mine area is approximately 50% wetlands, which will be dewatered and removed by the mine pit. Mining will result in the removal of approximately 13.8 miles of Stream 2003, with direct disturbance to 41% of its watershed. The mine will directly disturb 5% and 8% of the watersheds of Streams 2004 and 2002, respectively. Dewatering of the mine pit will result in impacts to local surface and groundwater hydrology. It is estimated that Streams 2002, 2003, and



2004 support 50% of the Chuit River coho salmon run (the dominant species in the system). Development of the coal export terminal has the potential to impact the *Ch'u'itnu* Archaeological District, a significant collection of historic and prehistoric Alaska Native house and cash pits.

### ***Background/Relationship with Native Village of Tyonek***

- NVT invited as cooperating agency by EPA in the SIES
- NVT invited as cooperating agency by Army Corps of Engineers after lead agency transfer
- NVT has requested ongoing consultation and coordination with EPA Region 10 due to our oversight and cooperating agency role in project
- R10 leadership (Alaska Operation Officer Director) and staff traveled to Tyonek to discuss our commitment to ongoing consultation and coordination throughout project and hear NVTs concerns.
- R10 has prepared a Fact Sheet outlining our regulatory roles and responsibilities in the project for NVT, as well as a draft MOU outlining our proposal for ongoing coordination and consultation. MOU to be signed soon.
- MOU envisions regularly scheduled conference calls between staff, with leadership level consultation meetings scheduled as needed when significant leadership levels issues arise, or when EPA is making a major regulatory or policy decision.

### ***EPA's Role***

- Cooperating agency status in SEIS
- CWA 402 and 404 oversight, potential review of applicants pending site specific water quality criteria proposal to Alaska DEC, which, if adopted/approved, would need ultimate approval from EPA WQS program.
- CAA 309 NEPA review

**Project Contact:** Jamey L. Stoddard, NPDES Permits Unit, EPA Region 10, (206.553.6110).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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Seattle, WA 98101-3140

OFFICE OF THE  
REGIONAL  
ADMINISTRATOR

**APR 27 2012**

The Honorable Frank Standifer, III  
President of the Native Village of Tyonek  
P.O. Box 82009  
Tyonek, Alaska 99682-0009

Dear President Standifer:

This letter is in follow-up to my February 2, 2012, letter regarding the proposed Chuitna Coal Project and your invitation for a government-to-government consultation leadership meeting with the Native Village of Tyonek. As discussed in my February letter, we have drafted a Memorandum of Understanding between the EPA and the NVT leadership outlining a proposal for ongoing coordination and consultation at the staff and leadership levels, as well as a fact sheet explaining our potential regulatory roles and responsibilities in the proposed project.

As explained in the fact sheet and draft MOU, our regulatory role in the proposed project is primarily oversight in nature; we have no regulatory action to take with regards to directly permitting or authorizing the development of the proposed project. The timing and schedule of our oversight actions is governed by our partner agencies' processes and schedules, and is largely out of our control. As the State of Alaska and Army Corps of Engineers develop respective schedules for their regulatory actions, we will better understand the timing of our oversight responsibilities and actions. Because of the uncertainty with schedule at this time, the draft MOU does not specifically identify the timing for each consultation and coordination opportunity between the EPA and the NVT. Rather, it sets up an agreement for regularly scheduled conference calls directly between the EPA and the NVT staff to discuss hot topics, issues of concern, upcoming actions and the need for any follow-up meetings or discussions between the EPA and the NVT leadership. We believe this approach will allow for appropriate coordination and consultation between the NVT and the EPA given our oversight role and the uncertainty surrounding the proposed project's regulatory schedule.

As you will see from the draft MOU, we envision the regularly scheduled conference calls taking place primarily between the EPA and the NVT staff. As discussed in my February 2012 letter, leadership discussions and meetings can be scheduled as appropriate, such as when we are considering a regulatory action, when there is an opportunity for meaningful NVT input, or when there is a significant leadership-level issue to discuss. If during a quarterly call the EPA or the NVT staff identify the need for a leadership meeting this would be elevated to the EPA and the NVT leadership for consideration and follow-up.

We look forward to receiving your comments on the draft MOU. Kate Kelly, Director of the Office of Ecosystems, Tribal and Public Affairs will coordinate with you and your staff to finalize and execute the agreement.



In the interim, I will be attending the 2012 Tribal Leaders Summit in Grande Ronde, Oregon during the week of April 30, 2012. It is my understanding that representatives from the NVT will also be in attendance. As part of my time at the Summit I intend to be available for discussion with Tribal representatives, and would welcome the opportunity to meet and engage with leaders from the NVT.

If you want to share any thoughts or comments, please contact Ms. Kelly at (206) 553-1271 or via email at [kelly.kate@epa.gov](mailto:kelly.kate@epa.gov).

Sincerely,



Dennis J. McLerran  
Regional Administrator

Enclosures:

cc: Ms. Marcia Heer, Corps of Engineers  
Mr. Tom Crafford, Alaska DNR  
Mr. Phil Brna, USFWS

# **MEMORANDUM OF UNDERSTANDING**

*between*

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

*and*

**THE NATIVE VILLAGE OF TYONEK**

*regarding*

**THE PROPOSED CHUITNA COAL PROJECT**

Federally recognized tribal governments have a unique relationship with the United States (U.S.) as defined by the Constitution, treaties, statutes, court decisions and Executive Orders. The U.S. Environmental Protection Agency, Region 10 (EPA), and the Native Village of Tyonek (NVT) enter into this Memorandum of Understanding (MOU) for the purpose of maintaining effective consultation and coordination between the EPA and the NVT regarding the proposed Chuitna Coal Project.

## **A. Recitals**

1. The Chuitna Coal Project (proposed project) is a proposed surface coal mining operation located along the west side of Cook Inlet within the Chuitna watershed in Alaska. The proposed project is currently in the permitting and environmental impact analysis processes. The EPA has transitioned from a lead federal agency to a cooperating agency in the National Environmental Policy Act (NEPA) review process. The EPA has committed to continued consultation and coordination with the NVT, consistent with the EPA's regulatory roles and responsibilities relating to the proposed project.
2. The NVT is a federally recognized Indian Tribe, located on the northwest shore of Cook Inlet, practicing a subsistence way of life that relies heavily on fishing and hunting. The NVT is a sovereign tribe governed by a tribal council elected by its membership to be responsible for the protection of tribal culture, subsistence resources, assets, rights, setting of tribal priorities, and developing and managing tribal resources.
3. The EPA is a federal agency that is responsible for the protection of the environment and public health throughout the United States. The EPA has no direct permitting role in connection with the proposed project, but does have oversight, review, or approval roles in connection with regulatory processes that may be involved, including:
  - a. *NPDES Permitting Oversight.* The proposed project may require one or more wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES), pursuant to Section 402 of the Clean Water Act (CWA). Any such permit would be issued by the State of Alaska Department of Environmental Conservation through the Alaska Pollutant Discharge Elimination System (APDES) program, but EPA would have the authority to review the permit for consistency with the requirements of the CWA and implementing regulations.



- b. *404 Permitting Oversight.* The proposed project may require one or more permits under Section 404 of the CWA, authorizing the discharge of dredged or fill material into navigable waters or wetlands. Any such permit would be issued by the U.S. Army Corps of Engineers and certified by the State of Alaska, but EPA would have the authority to review it for consistency with the requirements of the CWA and implementing regulations.
- c. *Water Quality Standards Approval.* The State of Alaska may seek to revise its water quality standards (WQS) in connection with the proposed project. Under Section 303 of the CWA any revisions to Alaska WQS would need ultimate review by EPA to ensure consistency with the requirements of the CWA and implementing regulations.
- d. *Environmental Impact Statement Preparation.* The U.S. Army Corps of Engineers is in the process of preparing a Supplemental Environmental Impact Statement (SEIS), in order to comply with NEPA. Both the EPA and the NVT are participating in this process as cooperating agencies, according to an existing MOU, which remains in effect and is not affected by this agreement.
- e. *Environmental Impact Statement Review.* Under Section 309 of the Clean Air Act EPA has the obligation to participate in the NEPA process, to review and comment on the EIS and, under certain circumstances, has the authority to elevate objections to the White House Council on Environmental Quality (CEQ).
4. The EPA and the NVT are establishing this MOU to provide a process for engaging in meaningful coordination regarding the proposed project. The timing and processes of the various regulatory actions involved are not yet determined, and neither the EPA nor the NVT is directly responsible for or has control over these regulatory actions or schedules.
5. The EPA strongly encourages the NVT to work directly with the lead federal and state agencies for environmental review and permitting related to the proposed project. The EPA and the NVT each have independent responsibilities as cooperating agencies in the development of the EIS. This MOU between the EPA and the NVT does not affect or supersede the MOU between the cooperating agencies.

### **B. Consultation Plan**

1. *Quarterly/Monthly Conference Calls.* The EPA and the NVT agree to conduct quarterly conference calls to discuss: the status of the various activities in which they are involved in connection with the proposed project; any review and permitting activities anticipated in the following six to twelve months; and potential opportunities for additional consultation and coordination between EPA and NVT staff or leadership, consistent with EPA's roles and responsibilities for the project, as described in the EPA Roles and Responsibilities Fact Sheet for the proposed project.
2. *Participants in Quarterly Calls.* The EPA participants in the quarterly calls will generally be the EPA's Chuitna Coal Project Lead (currently Jamey L. Stoddard), and the EPA's Tribal Coordinator



for south central Alaska (currently Katherine Brown). The NVT participants in the quarterly calls will be \_\_\_\_\_. Depending on the agenda for each call, additional EPA or NVT representatives may be invited who can share more specific information regarding particular activities or issues.

3. *Scheduling Quarterly Calls.* The EPA's Chuitna Coal Project Lead and the NVT's \_\_\_\_\_ will take jointly schedule and establish agenda topics for the quarterly calls.
4. *Additional Consultation and Coordination.* On each quarterly call, the participants may discuss what additional consultation and coordination may be appropriate in connection with activities anticipated in the next three to six months. Additional technical information or document exchanges, discussions with technical or program staff, or discussions between EPA and NVT leadership may be scheduled as appropriate and as resources allow, given the activities anticipated, the timing of those activities, and the EPA's and the NVT's roles in those activities.

### **C. Effect and Limitations of this Agreement**

1. This agreement is effective as of the last date signed below and will remain in effect until termination by either party by a written 30-day notice to the other party.
2. Nothing in this agreement is intended to expand, contract, or otherwise limit the sovereignty of the NVT.
3. By entering into this agreement the parties do not waive or create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity against any party of the United States, its agencies or instrumentalities, officers or employers or any other person.
4. The consultation and coordination contemplated by this MOU is intended to implement the requirements contained in the Executive Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments, and Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Consultation and coordination will be conducted in accordance with all EPA national and regional policies and guidelines. This MOU does not affect or supersede any existing EPA policy affecting federally recognized tribes.

The undersigned parties enter into this agreement between the NVT and the EPA, Region 10.

\_\_\_\_\_  
Dennis J. McLerran  
Regional Administrator  
EPA, Region 10

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frank Standifer, III  
President  
Native Village of Tyonek

\_\_\_\_\_  
Date







This document outlines the Environmental Protection Agency's (EPA) potential regulatory roles and responsibilities related to the proposed Chuitna Coal Project.

## ***EPA's Roles and Responsibilities***

### **Clean Water Act**

#### **Section 402 (NPDES) Oversight**

Section 402 of the Clean Water Act (CWA) established the National Pollutant Discharge Elimination System (NPDES), the national permitting program for the discharge of pollutants into waters of the United States (U.S.). Section 402(b) of the CWA provides that individual states wishing to implement the NPDES program for discharges into state waters can apply to the EPA for the development and implementation of a state-run NPDES program. States must demonstrate that their proposed program meets nine criteria set forth in CWA 402(b) prior to EPA approval. Proposed state programs meeting the nine criteria established in 402(b) will be approved by the EPA.

On October 31, 2008, the EPA approved the State of Alaska's application to administer the NPDES program, with the Alaska Department of Environmental Conservation (ADEC) being charged with implementation of the program. In its application, the State of Alaska requested that it assume authority for the NPDES program in phases. On October 31, 2010, the State of Alaska assumed NPDES permitting authority for the mining sector in Alaska, including the proposed Chuitna Coal Project.

While states and tribes with approved programs have the authority to issue and enforce NPDES permits within their jurisdictions, the EPA retains ultimate authority and jurisdiction for oversight of state and tribal programs and ensuring all NPDES permits meet the minimum requirements of the CWA and implementing regulations. Under the oversight enforcement authority provided in the CWA, the EPA can review any proposed or draft state NPDES permits and may raise objections if permit provisions do not meet the requirements of the CWA or implementing regulations. The EPA will work closely with the state and provide recommendations and actions that must be taken to resolve the objection. If the objection to the proposed state or tribal permit is not resolved, the EPA will assume issuance, compliance, and enforcement authority for that permit.

As discussed in previous meetings and correspondence, the EPA Region 10 has committed to review any proposed NPDES permits for the Chuitna Coal Project, and ensure its provisions meet the minimum requirements of the CWA and implementing regulations. As a state action, primary consultation and coordination on any proposed NPDES permits must occur directly between the NVT and the State of Alaska.



## **Section 404 (Wetlands and other Aquatic Resources) Oversight**

Section 404 of the CWA established the national regulatory program for the discharge of dredged or fill material into navigable waters of the U.S., including wetlands. Activities in waters of the U.S. regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the U.S., unless the activity is exempt from Section 404 regulations (e.g. certain farming and forestry activities). The basic premise of the 404 program is that no discharge of dredged or fill material may be permitted if: 1) a practicable alternative exists that is less damaging to the aquatic environment, or; 2) the nation's waters would be significantly degraded.

The U.S. Army Corps of Engineers (Corps) is responsible for administering the day-to-day activities of the 404 program, including reviewing applications and making permit decisions, conducting or verifying jurisdictional determinations, developing policy and guidance, and enforcing the provisions of Section 404. The EPA has various roles in the 404 program including: 1) developing policy, guidance, and environmental criteria used in evaluating permit applications; 2) determining the scope of geographic jurisdiction and applicability of exemptions; 3) approving and overseeing state and tribal assumption of the 404 program; 4) reviewing and commenting on individual permit applications; 5) prohibiting, denying, or restricting the use of any defined area as a disposal site (i.e., 404(c) veto); 6) elevating specific cases (i.e., 404(q)) and; 7) enforcing 404 provisions.

There are two types of permits for proposed activities regulated under Section 404 of the CWA—*individual permits* and *general permits*. Individual permits are issued for specific projects which may result in significant adverse impacts to the aquatic environment. Individual permits can be issued as a standard permit or *letter of permission*, which involves a more limited review for projects with minor impacts. General permits are issued for certain categories of projects which are substantially similar in nature and only involve minimal adverse impacts. Due to the significance of impacts, large-scale resource extraction projects typically require individual permits, while general permits are typically issued for projects such as minor road construction activities, utility line backfilling, etc. General permits may cover activities at the national, regional or local level (e.g., Nationwide Permit 12 for utility line activities throughout the U.S.), while individual permits are typically for activities associated with a specific project (e.g., construction of a gravel pad in wetlands for a specific oil and gas operation).

Permits issued under the 404 program are subject to the environmental criteria established by the EPA in the [CWA Section 404\(b\)\(1\) Guidelines](#)<sup>1</sup>. Section 230.10 of the EPA Guidelines establishes four basic requirements that must be met in order for the Corps to issue a permit. If any one of the requirements is not met, a permit cannot be issued. The four basic requirements of the Guidelines include:

1. **No Practicable Alternative.** There must be no practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequence.

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<sup>1</sup> <http://www.epa.gov/owow/wetlands/pdf/40cfrPart230.pdf>



2. No Violation of Other Laws. The project cannot be permitted if it: 1) causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard; 2) violates any applicable toxic effluent standard or prohibition under section 307 of the Act; 3) jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act ... or results in the destruction or adverse modification of ... critical habitat; or 4) violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary....
3. No Significant Degradation. The project must not cause or contribute to significant degradation of the waters of the U.S. This section of the 404(b)(1) Guidelines lists criteria to be considered in making a determination of significant degradation. It requires this determination to be based on appropriate factual determinations, evaluations, and tests.
4. Minimizing Adverse Impacts. The project must include appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

In 1990 the EPA and the Corps entered into a memorandum of agreement (MOA) outlining the policy and procedures to be used in determining the type and level of mitigation necessary to ensure compliance with the 404(b)(1) Guidelines. In 2008 the EPA and the Corps expanded the Guidelines to include additional requirements and guidance for compensatory mitigation to offset unavoidable impacts to wetlands and aquatic resources that cannot otherwise be avoided or minimized. The basic premise of the compensatory mitigation requirement is no net loss of wetlands overall, meaning that wetland losses which cannot be avoided or minimized must be replaced at a minimum of 1:1 ratio on a nationwide basis.

The EPA's 404 program staff review selected individual permit applications submitted to the Corps during the public notice and comment period on the application. If the EPA determines that the proposed project is not meeting the 404(b)(1) Guidelines, the EPA works with the Corps, other agencies, and the applicant to bring the project into compliance with the Guidelines. If the project, even with extensive modifications, does not comply with the guidelines, the Corps cannot authorize it. In addition to the EPA, the U.S. Fish and Wildlife Service (USFWS) also has a commenting role during the permit application review process. Inter-agency disputes and elevation of permitting issues are governed by the Section 404(q) Dispute Resolution Process established in various MOA's between the EPA, Corps, USFWS, and National Marine Fisheries Service. Section 404(c) authorizes EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fisheries areas, wildlife, or recreational areas. The EPA has used its 404(c) "veto authority" only 13 times since 1972, out of an average of 60,000 Corps permit actions each year.

Additional information on the 404 process can be found on the EPA's 404 website<sup>2</sup>, as well as various approved fact sheets on the general 404 process<sup>3</sup>, 404(q) Dispute Resolution Process<sup>4</sup>, and 404(c) veto authority<sup>5</sup>.

<sup>2</sup> <http://water.epa.gov/lawsregs/lawsguidance/cwa/wetlands/index.cfm>

<sup>3</sup> [http://www.epa.gov/owow/wetlands/pdf/reg\\_authority\\_pr.pdf](http://www.epa.gov/owow/wetlands/pdf/reg_authority_pr.pdf)

<sup>4</sup> <http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

<sup>5</sup> <http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/upload/404c.pdf>



EPA's role in the 404 process for the Chuitna Coal Project will be to: 1) continue to work with the Corps, project applicant, and other agencies in the pre-application process, ensuring the best available science is used in the 404 process; 2) review and comment on any public notice for permit application; 3) ensure the project and permit meet the requirements of the 404(b)(1) Guidelines, the CWA, and implementing regulations. Because the Corps is the lead agency for 404 permitting, primary consultation and coordination on any proposed 404 permits must occur directly between the NVT and Corps.

### **Section 303 (Water Quality Standards)**

There are two primary mechanisms for the control of point source pollution under the CWA—*technology-based effluent limitations* and *water quality standards*. Technology-based effluent limitations are established nationally by the EPA and represent the minimum level of pollution control that all sources must meet based on pollution prevention or treatment technologies available. These minimum technology-based standards are established without considering the water quality goals or site specific conditions of the receiving water.

Water quality standards (WQS) define the goals for a waterbody by designating its uses (e.g., recreation, aquatic life protection, public water supply, etc), setting narrative or numeric criteria to protect those uses (e.g., *no toxics in toxic amounts*, 3.2 µg Cu/L), and establishing provisions such as antidegradation and mixing zone policies to protect waterbodies from pollutants. States, territories, and authorized tribes are required under the CWA to establish WQS for their waters. Where the minimum technology-based effluent limitations are insufficient to achieve or protect the designated uses established for a waterbody, the WQS serve as the bases for defining where additional pollution controls are needed to meet the water quality goals of the state, territory, or authorized tribe.

The EPA is required to review all proposed state, territory, or authorized tribal WQS—including revisions to previously approved standards—to determine if they meet the requirements of the CWA and implementing regulations. Proposed standards which meet these requirements are approved for use in implementing the CWA within the waters to which they apply.

The State of Alaska has EPA-approved WQS for all surface waters within the state of Alaska. These WQS include designated uses, narrative and numeric criteria to protect those uses, and other provisions for antidegradation and mixing zone policies. Any revisions or amendments to Alaska's current WQS—including the adoption of site-specific criteria, change in established designated uses, adoption of new or revised numeric or narrative criteria or change in mixing zone policies—must go through a public review and comment process, be adopted by the State into their regulations, and be reviewed by the EPA for consistency with the CWA and implementing regulations.

Alaska's WQS contain a provision that allows for the establishment of site-specific water quality criteria under specified conditions (18 AAC 70.235)<sup>6</sup>. Site-specific water quality criteria modify otherwise applicable state-wide criteria to be more or less stringent, based upon site-specific conditions affecting the level of controls needed to

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<sup>6</sup> [http://dec.alaska.gov/water/wqsar/wqs/pdfs/18\\_AAC\\_70%20Amended\\_September\\_19\\_2009.pdf](http://dec.alaska.gov/water/wqsar/wqs/pdfs/18_AAC_70%20Amended_September_19_2009.pdf)



protect the designated uses in a specific waterbody. There are several ways to develop site specific criteria, but typically a large amount of baseline monitoring and scientific analysis is required to determine the level of protection necessary to ensure the achievement or protection of a particular waterbody's designated uses. Individuals can apply for the development of site-specific criteria by performing the necessary monitoring and analysis and submitting the appropriate documentation to the State. Alternatively, the State can develop site-specific criteria under its own initiative.

Adoption of a site-specific criteria or a change in the designated use of a waterbody is considered a revision to Alaska's WQS and subject to a State public rule-making process, complete with a public review and comment period. Once the State has completed its public review process it must adopt the revision into the State regulations and submit the WQS revision to the EPA for review. The revised criteria may not be used by the State of Alaska until it is approved by the EPA.

The Chuitna watershed has naturally occurring concentrations of some metals which are higher than the numeric criteria established in Alaska's WQS. As a result, the proponents of the Chuitna Coal Project have been exploring options for revising a few of the metals criteria applicable to the Chuitna watershed. Any revised criteria must be scientifically defensible and shown to be protective of the aquatic life and other uses that currently exist in the watershed. As with any revision to Alaska's WQS, adoption of site specific metals criteria or change in designated uses of the Chuitna watershed would be subject to a public review and comment process and, ultimately, approval from the EPA. As a State action, primary consultation and coordination on any proposed revisions to Alaska's WQS must occur directly between the NVT and State of Alaska.

### **National Environmental Policy Act**

#### **Clean Air Act Section 309—NEPA Review**

Under Section 309 of the Clean Air Act the EPA is required to review and publicly comment on the environmental impacts of major Federal actions, including actions which are the subject of draft and final Environmental Impact Statements (EISs) under the National Environmental Policy Act (NEPA), proposed environmental regulations, and other proposed major actions. If the EPA determines that the action is environmentally unsatisfactory, it is required by Section 309 to refer the matter to the President's Council on Environmental Quality (CEQ). The most common form of 309 review is the review of EIS's prepared by other Federal agencies pursuant to NEPA. The EPA's Section 309 responsibilities are carried out according to the October 3, 1984 manual, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."<sup>7</sup>

During the 309 process the EPA reviews and comments on the adequacy of the environmental analysis presented in the draft and final EIS, as well as the environmental impacts of the proposed action itself. In addition to written comments, the EPA has also established a two-part rating system for the draft EIS, with one aspect rating the environmental impacts of the project and the other rating the technical adequacy of the analysis used to make impact determinations. There are four ratings for the level of environmental impacts—Lack of Objections (LO), Environmental Concern (EC), Environmental Objection (EO), and Environmentally

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<sup>7</sup> [http://www.epa.gov/compliance/resources/policies/nepa/nepa\\_policies\\_procedures.pdf](http://www.epa.gov/compliance/resources/policies/nepa/nepa_policies_procedures.pdf)



Unsatisfactory (EO)—and three levels of rating for the adequacy of the document—Adequate (1), Insufficient Information (2), and Inadequate (3). The rating criteria for environmental impacts and document adequacy are summarized below.

#### **Impact of Action**

**Lack of Objections (LO):** The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.

**Environmental Concerns (EC):** The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.

**Environmental Objections (EO):** The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for Environmental Objections can include situations:

1. Where an action might violate or be inconsistent with the achievement or maintenance of a national environmental standard;
2. Where the Federal agency violates its own substantive environmental requirements that relate to EPA's area of jurisdiction or expertise;
3. Where there is a violation of an EPA policy declaration;
4. Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modifications or other feasible alternatives; or
5. Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.

**Environmentally Unsatisfactory (EU):** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an Environmentally Unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above, and one or more of the following conditions:

1. The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;
2. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or
3. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.



### **Adequacy of Impact Statement**

**Adequate (1):** The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Insufficient Information (2):** The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.

**Inadequate (3):** The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purpose of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

The EPA develops written comments and assigns a two-part rating at the draft stage of the EIS. The final EIS is not assigned an additional rating, but the EPA can submit written comments. Adverse ratings such as EU-3 are subject to review by EPA's Office of Federal Activities prior to finalization. In addition, the CEQ is always informed of an adverse rating. If the EPA determines the subsequent final EIS is still unsatisfactory, the Region recommends to the EPA Administrator that the action be referred to the CEQ for resolution.

### **NEPA Cooperating Agency**

Under NEPA, Federal agencies can cooperate on the development of a NEPA analysis when more than one agency has jurisdiction over an aspect of the proposal or special expertise of an environmental issue. Under these circumstances, a lead agency is designated to supervise the preparation of the NEPA analysis, with other cooperating agencies assisting the lead agency in the development of the analysis.

The EPA has accepted the Corps' offer to participate in the development of the Chitna Coal Project Supplemental Environmental Impact Statement as a cooperating agency due to our special expertise in the development of EIS's for large resource extraction projects in Alaska. As a cooperating agency, the EPA is responsible for assisting the Corps in the development of the SEIS.





# Clean Water Act

## Section 404(c) "Veto Authority"

The Clean Water Act authorizes the U.S. Army Corps of Engineers (the Corps) (Section 404(a)) or an approved state (Section 404(h)) to issue permits for discharges of dredged or fill material at specified sites in waters of the United States. Section 404(c), however, authorizes EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

### "Veto Authority"

Under Section 404(c), EPA may exercise a veto over the specification by the Corps or by a state of a site for the discharge of dredged or fill material. EPA may also prohibit or otherwise restrict the specification of a site under Section 404(c) with regard to any existing or potential disposal site before a permit application has been submitted to or approved by the Corps or a state. In effect, Section 404(c) authority may be exercised before a permit is applied for, while an application is pending, or after a permit has been issued.

Because Section 404(c) actions have mostly been taken in response to unresolved Corps permit applications, this type of action is frequently referred to as an EPA veto of a Corps permit. Although the Corps processes approximately 60,000 permit actions per year,<sup>1</sup> EPA has used its Section 404(c) authority very sparingly, issuing only 13 final veto actions since 1972.

An EPA Regional Administrator initiates a 404(c) action if he or she determines that the impact of a proposed permit activity is likely to result in:

- significant degradation of municipal water supplies (including surface or ground water) or,
- significant loss of or damage to fisheries, shellfishing, wildlife habitat, or recreation areas.

<sup>1</sup> Source: Corps permit data 1988-2010, U.S. Army Corps of Engineers Headquarters, Regulatory Branch.

### Section 404(c) "Veto" Process

#### Intent to Issue Notice of Proposed Determination

The EPA Regional Administrator notifies the Corps and the project proponent of his or her intention to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for discharge of dredged or fill material.

#### Notice of Proposed Determination

If the Regional Administrator is not satisfied that no unacceptable adverse effects will occur, a notice of the Proposed Determination is published in the *Federal Register*. The Proposed Determination begins the process of exploring whether unacceptable adverse effects will occur.

#### Public Comment Period (generally between 30 and 60 days)

A public hearing is usually held during the comment period.

#### Recommended Determination or Withdrawal (within 30 days of the public hearing or, if no public hearing is held, within 15 days of the end of the comment period)

The Regional Administrator prepares a Recommended Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for disposing of dredged or fill material and forwards it along with the administrative record to the EPA Assistant Administrator for Water. Alternatively, he or she withdraws the Proposed Determination.

#### Corrective Action

(within 30 days of receipt of the Recommended Determination)

The EPA Assistant Administrator contacts the Corps and project proponent and provides them 15 days to take corrective action to prevent unacceptable adverse effects.

#### Final Determination

(within 60 days of receipt of the Recommended Determination)

The EPA Assistant Administrator affirms, modifies, or rescinds the Recommended Determination and publishes notice of the Final Determination in the *Federal Register*.



## Final Section 404(c) Veto Determinations

The thirteen 404(c) actions that EPA has finalized as of 2011 have involved unacceptable adverse impacts to a variety of aquatic resources including freshwater forested, emergent and shrub wetlands; tidal freshwater and tidal estuarine wetlands; as well as streams, rivers, and lakes. As noted in the following table, these final 404(c) actions have involved a variety of projects across a broad geographic area.

	Project Name	Initiation and Final Determination Dates	Location		
			EPA Region	State	Corps District
13	<b>Spruce No. 1 Surface Mine</b> Surface Coal Mine	<ul style="list-style-type: none"> <li>Initiated October 16, 2009</li> <li>Final Determination issued January 13, 2011</li> </ul>	3	WV	Huntington
12	<b>Yazoo Pumps</b> Flood Control Project	<ul style="list-style-type: none"> <li>Initiated February 1, 2008</li> <li>Final Determination issued August 31, 2008</li> </ul>	4	MS	Vicksburg
11	<b>Two Forks</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated March 24, 1989</li> <li>Final Determination issued November 23, 1990</li> </ul>	8	CO	Omaha
10	<b>Big River</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated August 24, 1988</li> <li>Final Determination issued March 1, 1990</li> </ul>	1	RI	New England
9	<b>Ware Creek</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated August 4, 1988</li> <li>Final Determination issued July 10, 1989</li> </ul>	3	VA	Norfolk
8	<b>Lake Alma</b> Dam and Recreational Impoundment	<ul style="list-style-type: none"> <li>Initiated June 8, 1988</li> <li>Final Determination issued December 16, 1988</li> </ul>	4	GA	Savannah
7	<b>Henry Rem Estates</b> Agricultural Conversion - Rockplowing	<ul style="list-style-type: none"> <li>Initiated April 22, 1987</li> <li>Final Determination issued June 15, 1988</li> </ul>	4	FL	Jacksonville
6	<b>Russo Development Corps</b> Warehouse Development (After-the-fact permit)	<ul style="list-style-type: none"> <li>Initiated May 26, 1987</li> <li>Final Determination issued March 21, 1988</li> </ul>	2	NJ	New York
5	<b>Attleboro Mall</b> Shopping Mall	<ul style="list-style-type: none"> <li>Initiated July 23, 1985</li> <li>Final Determination issued May 13, 1986</li> </ul>	1	MA	New England
4	<b>Bayou Aux Carpes</b> Flood Control Project	<ul style="list-style-type: none"> <li>Initiated December 17, 1984</li> <li>Final Determination issued October 16, 1985</li> </ul>	6	LA	New Orleans
3	<b>Jack Maybank Site</b> Duck Hunting/Aquaculture Impoundment	<ul style="list-style-type: none"> <li>Initiated April 15, 1984</li> <li>Final Determination issued April 5, 1985</li> </ul>	4	SC	Charleston
2	<b>Norden Co.</b> Waste Storage/Recycling Plant	<ul style="list-style-type: none"> <li>Initiated September 30, 1983</li> <li>Final Determination issued June 15, 1984</li> </ul>	4	AL	Mobile
1	<b>North Miami</b> Landfill/Municipal Recreational Facility	<ul style="list-style-type: none"> <li>Initiated June 25, 1980</li> <li>Final Determination issued January 19, 1981</li> </ul>	4	FL	Jacksonville

## Selected References

EPA Clean Water Act Section 404(c) website: [http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c\\_index.cfm](http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/404c_index.cfm)  
EPA Clean Water Act Section 404(c) Fact Sheet: <http://water.epa.gov/type/wetlands/outreach/upload/404c.pdf>  
Chronology of Final Section 404(c) Actions: <http://water.epa.gov/lawsregs/guidance/wetlands/404c.cfm>  
EPA Wetlands Division website: <http://water.epa.gov/type/wetlands/index.cfm>



# Clean Water Act

## Section 404(q) Dispute Resolution Process

*The Clean Water Act (Section 404(a)) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for discharges of dredge or fill material at specified sites in waters of the United States. In making a permit decision, the U.S. Army Corps of Engineers (Corps) solicits and considers the views of the public as well as State and Federal resource agencies. At times, EPA may oppose the Corps' intent to issue a Section 404 permit for a particular project. This fact sheet describes the process to resolve these differences.*

### Section 404(q) Memorandum of Agreement

Section 404(q) of the Clean Water Act establishes a requirement that the Secretary of the Army and the Administrator of EPA enter into an agreement assuring that delays in the issuance of permits under Section 404 are minimized. In August 1992, Army and EPA entered into such an agreement. The 1992 Section 404(q) Memorandum of Agreement (MOA) outlines the current process and time frames for resolving disputes, in an effort to issue timely permit decisions.

Under this MOA, EPA may request that certain permit applications receive a higher level of review within the Department of Army. In these cases EPA determines that issuance of the permit will result in unacceptable adverse effects to Aquatic Resources of National Importance. Alternately, EPA may raise concerns over Section 404 program policies and procedures. Because this kind of review does not directly relate to a specific permit, it does not delay the review of pending permit applications.



### Aquatic Resources of National Importance

An **Aquatic Resource of National Importance** (ARNI) is a resource-based threshold used to determine whether a dispute between EPA and the Corps regarding individual permit cases are eligible for elevation under the 1992 MOA. Factors used in identifying ARNIs include: economic importance of the aquatic resource, rarity or uniqueness, and/or importance of the aquatic resource to the protection, maintenance, or enhancement of the quality of the Nation's waters. Past 404(q) elevations have identified the Chesapeake Bay, vernal pools, bottomland hardwoods, sub-alpine fens, bogs, and coastal marshes as ARNIs.

Photo by Mark Bright



Vernal pools have been identified as Aquatic Resources of National Importance (ARNIs) in past Section 404(q) elevations.



## Section 404(q) Dispute Resolution Process for Individual Permits

### EPA "May Affect" Letter

*(within the Comment Period for the Public Notice)*

EPA Region must notify Corps District Engineer by letter that the project may result in substantial and unacceptable impacts to Aquatic Resources of National Importance (ARNIs).

### EPA "Will Affect" Letter

*(within 25 days of the end of the Public Notice comment period)*

If the issues raised in the "may affect" letter remain unresolved, the Region issues a letter stating that the project will have substantial and unacceptable impacts to an ARNI. The "will affect" letter must be signed by the EPA Regional Administrator.

### Notice of Intent to Proceed

*(within 5 calendar days prior to the issuance of a permit)*

The Corps District Engineer notifies EPA Regional Administrator if the Corps intends to issue the permit contrary to EPA's recommendations in the "will affect" letter. The Corps must provide the EPA Region with a copy of the draft permit and decision document.

### Case Elevation

*(within 15 calendar days from receipt of the notice of intent to proceed)*

The EPA Regional Administrator must decide whether to request Headquarters to seek Department of the Army level review of the District's permit decision, and subsequently notifies the Corps District of this decision. The permit is held in abeyance pending Headquarters review.

### Review of Corps Decision

*(within 20 calendar days of receiving the EPA Regional Administrator's request for elevation)*

The EPA Assistant Administrator decides whether to seek higher level review of the District's permit decision by the Assistant Secretary of the Army (Civil Works).

### Army Review

*(within 30 calendar days from the EPA Assistant Administrator's request for review)*

EPA Headquarters case elevation is reviewed by the Assistant Secretary of the Army (Civil Works). The Assistant Secretary may either inform the District Engineer to proceed with the permit, proceed with the permit in accordance with policy guidance specific to the case, or make a final permit decision. The Assistant Secretary of the Army (Civil Works) must notify the EPA Assistant Administrator immediately of his/her decision.

### Section 404(c) "Veto Process"

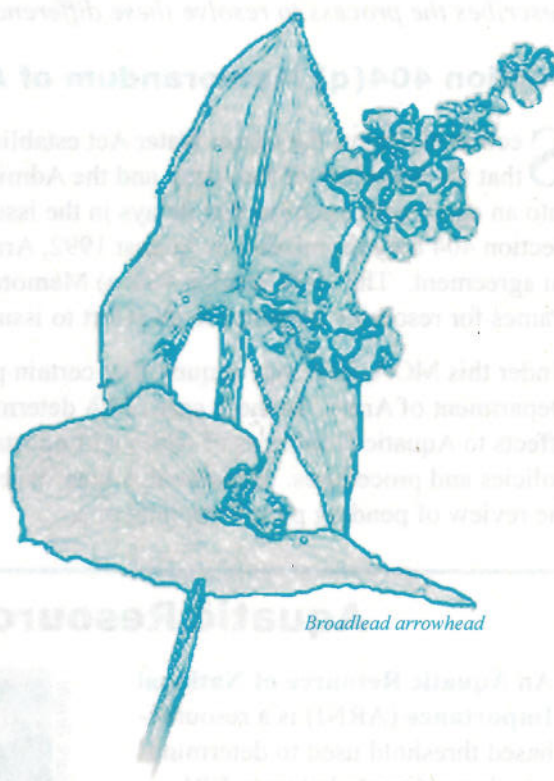
*(within 10 calendar days from Assistant Secretary of the Army (Civil Works) decision)*

If the Assistant Secretary decides to proceed with the issuance of the permit over EPA's objections, EPA decides whether to initiate a Section 404(c) "veto" action.

## Section 404(q) Case Statistics

EPA has requested higher level of review by the Department of Army on 11 permit cases under the 1992 404(q) MOA as of January 2011, a modest number in light of the fact that the Corps processes approximately 60,000 permit actions per year.<sup>1</sup> Eight (8) additional permit cases were elevated to EPA Headquarters by an EPA regional office, but were resolved with the Department of Army before a final elevation package was transmitted.

<sup>1</sup> Source: Corps permit data 1988-2010, U.S. Army Corps of Engineers Headquarters, Regulatory Branch.



Broadleaf arrowhead

## Selected References

EPA Clean Water Act Section 404(q) Dispute Resolution Process Factsheet:

<http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

1992 Section 404(q) Memorandum of Agreement:

<http://water.epa.gov/lawsregs/guidance/wetlands/dispmoa.cfm> or  
[http://www.usace.army.mil/CECW/Documents/cecwo/reg/moa/moa\\_epa404q.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/moa/moa_epa404q.pdf)

EPA Wetlands Division website:

<http://water.epa.gov/type/wetlands/index.cfm>

U.S. Army Corps of Engineers Headquarters Regulatory website:

[http://www.usace.army.mil/CECW/Pages/cecwo\\_reg.aspx](http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx)



1. Why is a watershed assessment not appropriate for this project?

An EIS was originally completed for the proposed action in 1990. The Corps is now actively preparing a Supplemental EIS to support the NEPA/CWA Section 404 determination. As a result, the Corps will synthesize applicable existing scientific literature, identify potential impacts of the proposed action, and present mitigation strategies to offset potential impacts in the SEIS. The EIS will contain information on potential impacts on the watershed which is essentially the same information as in the watershed assessment undertaken for Bristol Bay. For the Bristol Bay Watershed Assessment, there was no formal permit action pending and no actions undertaken to assess the watershed resources.

2. What does it take for EPA to start a 404(c) action?

As mentioned above, the Corps is now working on the SEIS and the EPA has been actively engaged in the process to date. We will continue to collaboratively work with the Corps in the process. If, at the end of the permit process, the EPA determines that all relevant issues have not been adequately addressed and the proposed permit activity is likely to result in unacceptable adverse effects on municipal water supplies, shellfish beds and fisheries areas, wildlife, or recreational areas, EPA could invoke Section 404(c) authority. This authority allows the EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Section 404(c) authority may be exercised before a permit is applied for, while an action is pending, or after a permit has been issued. An EPA Regional Administrator initiates a 404(c) action if he or she determines that the impact of a proposed permit activity is likely to result in unacceptable adverse effects on municipal water supplies, shellfish beds and fisheries areas, wildlife, or recreational areas. The EPA has used its 404(c) "veto authority" only 13 times since 1972, out of an average of 60,000 Corps permit actions each year.

